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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/749,988
Filing Date: December 31, 2003
Appellant(s): MCDONALD, DUANE L.

Randall W. Fieldhack
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/23/2008 appealing from the Office action mailed 2/26/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The change is as follows:

WITHDRAWN REJECTIONS

The following ground of rejection is not presented for review on appeal because it has been withdrawn by the Examiner. Ground 5 with respect to claims 8, 16 and 25 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 11 and 22 above and further in view of Japanese Patent No. 10-95481 to Narawa (hereinafter "Narawa").

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,403,776	DENNY	10-1968
2,676,702	WHITEFOOT, JR	4-1954
6,640,976	FRANKS-FARAH ET AL.	11-2003
3,286,435	WEINBERGER	11-1966
4,896,768	ANDERSON	1-1990
JP10-95481	NARAWA	4-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 3-5, 7-14 and 16-26 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "garment-type" in claims 1, 11 and 21 is vague, confusion and indefinite because such phrase has no clear meaning. It is not clear what type of a disposable absorbent article is included or excluded by such phrase. The term "garment" is defined as an article of clothing, esp. of outer clothing (WEBSTER'S II New Riverside University Dictionary).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 4, 7 and 10 stand rejected under 35 U.S.C. 102(b) as being anticipated by Denny (3,403,776). To the extent that the Examiner can determine the scope of the claims, Denny discloses a package (1) enclosing a single disposable absorbent article (2) comprising a first piece of material (4) and a second piece of material (6). The first piece of material and the second piece of material are operatively associated with one another to enclose the absorbent article and the operative association defining a seal (7). At least a portion of the first piece of material and at least a portion of the second piece of material extend beyond the seal to deliver an opening element (Figure 4). Denny further discloses the first piece of material formed from an air pervious paper and the second piece of material formed from a polypropylene film which is different rigidity than the first piece of material. Denny discloses the disposable absorbent article comprises sponge, swab and the like. The sponge or swab is inherently capable to be worn by a human between a human's skin and an article of clothing which is considered equivalent to a garment-type as claimed.

As to claim 3, Denny discloses the first piece of material formed from an air pervious paper and the second piece of material formed from a polypropylene film which appears less rigid than the first piece of material.

As to claim 4, Denny discloses a second piece of material (4) and a first of material (6). The second piece of material formed from an air pervious paper and the first piece of material formed from a polypropylene film which appears less rigid than the second piece of material.

As to claim 7, Denny discloses in the embodiment of Figures 1 and 4, the portion of the first piece of material and the portion of the second piece of material (11, 12) extending beyond the seal and the portions are non-coterminuous.

As to claim 10, since this claim does not indicate whether the absorbent article is in a folded or unfolded configuration while disposed within the package, the absorbent article (2) of Denny is inherently capable to be folded to provide a ratio in a folded configuration to an unfolded configuration of no more than 0.09.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 21 stands rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Whitefoot, Jr. (2,676,702). To the extent that the Examiner can determine the scope of the claim, Whitefoot discloses a package (15) in the embodiment of Figure 3 enclosing at least a single disposable absorbent article (16) comprising a first piece of material and a second piece of material. The first piece of material and the second piece of material are operatively associated with one another to enclose the absorbent article and

the operative association defining a seal (18). The seal defined at least one lateral edge and at least one longitudinal edge, and at least a portion of the first piece of material and at least a portion of the second piece of material extend beyond the seal to deliver an opening tab (15e, 15f) with a portion of the opening tab extends beyond at least one lateral edge of the seal and a portion of the opening tab extends beyond at least one longitudinal edge of the seal (the seal is spaced within the lateral edges and longitudinal edges of the package). To the extent that Whitefoot discloses a plurality of absorbent articles in lieu of a single absorbent article, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the package of Whitefoot so it comprises a single absorbent article to reduce the size of the package. Whitefoot discloses the disposable absorbent articles comprise bandages or sponges or gloves and since each of the bandages is inherently capable to be worn by a human by attaching to a human's skin which is considered equivalent to a garment-type absorbent article as claimed.

7. Claim 1, 3-5, 7, 10-14, 20-24 and 26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Denny (3,403,776) in view of Whitefoot (2,676,702). Denny discloses the package (1) enclosing a single disposable absorbent article (2) as above having all the limitation. To the degree it can be argued that the sponge or swab of Denny is not considered equivalent to a garment-type absorbent article as claimed, Whitefoot shows a package (15) for holding at least a sponge or bandage and the bandage is capable to be worn by a human by attaching to a human's skin which is considered equivalent to a garment-type absorbent article as claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made in

view of Whitefoot to modify the package of Denny so the disposable absorbent article comprises a bandage/garment-type to allow the package of Denny for holding various types of absorbent articles.

As to claims 5 and 21, the package of Denny further fails to show a portion of the opening element being extended beyond at least one lateral edge of the seal and a portion of the opening element extends beyond at least one longitudinal edge of the seal. Whitefoot shows a package (15) in the embodiment of Figure 3 enclosing at least a single disposable absorbent article (16) comprising a first piece of material and a second piece of material. The first piece of material and the second piece of material are operatively associated with one another to enclose the absorbent article and the operative association defining a seal (18). The seal defined by at least one lateral edge and at least one longitudinal edge, and at least a portion of the first piece of material and at least a portion of the second piece of material extend beyond the seal to deliver an opening tab (15e, 15f) with a portion of the opening tab extends beyond at least one lateral edge of the seal and a portion of the opening tab extends beyond at least one longitudinal edge of the seal (the seal is spaced within the lateral edges and longitudinal edges of the package). It would have been obvious to one having ordinary skill in the art in view of Whitefoot to modify the package of Denny so it includes a portion of the opening element extends beyond at least one lateral edge of the seal and a portion of the opening element extends beyond at least one longitudinal edge of the seal to facilitate opening the package.

As to claim 11, the absorbent article (2) of Denny is capable to provide a ratio in a folded configuration to an unfolded configuration of less than 0.14 because the absorbent article of Denny is capable to be folded to provide such ratio as claimed.

8. Claims 9, 17 and 18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 11 above, and further in view of Frank-Farah et al.

(6,640,976; hereinafter Frank-Farah'976). The package of Denny further fails to show the opening element being coded to indicate the size or type of the article.

Frank-Farah'976 shows a package (10) for articles (12-30) comprising color coded on the articles and instructions (34, column 5, lines 1-7) so a user can easily identify when an article is required (column 4, lines 65-67). As shown in Figure 1, most of the articles are packed in containers with each container comprises the color coded and the color coded on the container is matched with the color coded on the instructions to indicate a type of the article when is required which is considered equivalent to a "type" as claimed. It would have been obvious to one having ordinary skill in the art in view of Frank-Farah'976 to modify the package of Denny as modified so the package includes color coded to indicate the type of the article disposed within the package to provide more convenience for the user. With respect to the location of the color coded such as the opening element comprises the color coded as claimed, it would have been obvious to one having ordinary skill in the art in view of the package of Denny as modified so the color coded is disposed on the opening element to allow the user to review the type of the article prior of opening the package and because the selection of the specific location for the color coded such as the location as taught by Franks-Farah or as claimed would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well.

9. Claim 19 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 17 above, and further in view of The Official Notice. The package

of Denny as modified further fails to show the coded being tactilely coded. The Official Notice is taken of the old conventional practice of providing tactilely coded for helping the visually handicapped user. It would have been obvious to one having ordinary skill in the art in view of The Official Notice to modify the package of Denny as modified so the coded comprises tactilely coded to provide more convenience for the visually handicapped user.

10. Claims 1, 3, 4, 7, 10-14 and 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Weinberger (3,286,435) in view of Denny (3,403,776) or Anderson (4,896,768). Weinberger discloses a package (20) enclosing a single disposable absorbent article (21) comprising a first piece of material and a second piece of material. Weinberger also discloses that it is old and conventional to fold the absorbent article into a plurality of folds by folding the same in half, then quarters, then eights, sixteenths and so on until the desired small, compact size is reached so that the same may be enclosed in a relatively small flat package (column 1, lines 22-30) which is considered equivalent to a ratio of the folded configuration to the unfolded configuration of less than 0.14 or no more than 0.09 as claimed. Weinberger also discloses the other claimed limitations except for the first piece of material and the second piece of material being different rigidities.

Denny shows a package (1) enclosing a single disposable absorbent article (2) comprising a first piece of material (4), a second piece of material (6) and the first piece of material and the second piece of material having different rigidities. Anderson teaches a package (10) enclosing a single disposable absorbent article (14) comprising a first piece of material (12, formed from two layers), a second piece of material (16, single layer) and the first piece of material and the second

piece of material having different rigidities (Figure 2). It would have been obvious to one having ordinary skill in the art in view of Denny or Anderson to modify the package of Weinberger so the package comprises the first piece of material and the second piece of material having different rigidities to provide an additional strength and rigidity to the package. Weinberger discloses the disposable absorbent article comprises a cleansing towel, napkin or the like. The cleansing towel or napkin is inherently capable to be worn by a human between a human's skin and an article of clothing which is considered equivalent to a garment-type absorbent article as claimed.

As to claim 11, Weinberger discloses the package with the ratio as claimed. To the extent that Weinberger fails to provide an opening element, it would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Denny or Anderson to modify the package of Weinberger so it includes an opening element defined by a portion of the layer of material extends beyond at least one lateral seal to facilitate opening the package.

11. Claim 5 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Whitefoot (2,676,702). The package of Weinberger as modified further fails to show a portion of the opening element being extended beyond at least one lateral edge of the seal and a portion of the opening element extends beyond at least one longitudinal edge of the seal.

Whitefoot shows a package (15) in the embodiment of Figure 3 enclosing at least a single disposable absorbent article (16) comprising a first piece of material and a second piece of material. The first piece of material and the second piece of material are operatively associated

with one another to enclose the absorbent article and the operative association defining a seal (18). The seal defined at least one lateral edge and at least one longitudinal edge, and at least a portion of the first piece of material and at least a portion of the second piece of material extend beyond the seal to deliver an opening tab (15c, 15f) with a portion of the opening tab extends beyond at least one lateral edge of the seal and a portion of the opening tab extends beyond at least one longitudinal edge of the seal (the seal is spaced within the lateral edges and longitudinal edges of the package). It would have been obvious to one having ordinary skill in the art in view of Whitefoot to modify the package of Weinberger as modified so it includes a portion of the opening element extends beyond at least one lateral edge of the seal and a portion of the opening element extends beyond at least one longitudinal edge of the seal to facilitate opening the package.

12. Claims 8 and 16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 11 above, and further in view The Japanese Patent No. 10-95481 to Narawa (hereinafter Narawa). The package of Weinberger as modified further fails to show the package being vacuum packed.

Narawa shows a package (1) enclosing a single disposable absorbent article (2) comprising a vacuum packed. It would have been obvious to one having ordinary skill in the art in view of Narawa to modify the package of Weinberger as modified so the package is vacuum packed to reduce the size of the package.

13. Claims 9, 17 and 18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 11 above, and further in view of Frank-Farah et al.

(6,640,976; hereinafter Frank-Farah'976). The package of Weinberger as modified further fails to show the opening element being coded to indicate the size or type of the article.

Frank-Farah'976 shows a package (10) for articles (12-30) comprising color coded on the articles and instructions (34, column 5, lines 1-7) so a user can easily identify when an article is required (column 4, lines 65-67). As shown in Figure 1, most of the articles are packed in containers with each container comprises the color coded and the color coded on the container is matched with the color coded on the instructions to indicate a type of the article when is required which is considered equivalent to a "type" as claimed. It would have been obvious to one having ordinary skill in the art in view of Frank-Farah'976 to modify the package of Weinberger as modified so the package includes color coded to indicate the type of the article disposed within the package to provide more convenience for the user. With respect to the location of the color coded such as the opening element comprises the color coded as claimed, it would have been obvious to one having ordinary skill in the art in view of the package of Weinberger as modified so the color coded is disposed on the opening element to allow the user to review the type of the article prior of opening the package and because the selection of the specific location for the color coded such as the location as taught by Franks-Farah or as claimed would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well.

14. Claim 19 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 17 above, and further in view of The Official Notice. The package of Weinberger as modified further fails to show the coded being tactilely coded.

The Official Notice is taken of the old conventional practice of providing tactilely coded for helping the visually handicapped user. It would have been obvious to one having ordinary skill in the art in view of The Official Notice to modify the package of Weinberger as modified so the coded comprises tactilely coded to provide more convenience for the visually handicapped user.

15. Claims 21 and 26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Weinberger (3,286,435) in view of Whitefoot (2,676,702). Weinberger discloses the package as above having all the limitations of the claims except for an opening tab and a portion of the opening tab being extended beyond at least one lateral edge of the seal and a portion of the opening tab being extended beyond at least one longitudinal edge of the seal.

Whitefoot shows a package (15) in the embodiment of Figure 3 enclosing at least a single disposable absorbent article (16) comprising a first piece of material and a second piece of material. The first piece of material and the second piece of material are operatively associated with one another to enclose the absorbent article and the operative association defining a seal (18). The seal defined at least one lateral edge and at least one longitudinal edge, and at least a portion of the first piece of material and at least a portion of the second piece of material extend beyond the seal to deliver an opening tab (15e, 15f) with a portion of the opening tab extends beyond at least one lateral edge of the seal and a portion of the opening tab extends beyond at least one longitudinal edge of the seal (the seal is spaced within the lateral edges and longitudinal

edges of the package). It would have been obvious to one having ordinary skill in the art in view of Whitefoot to modify the package of Weinberger so it includes an opening tab and a portion of the opening tab extends beyond at least one lateral edge of the seal and a portion of the opening tab extends beyond at least one longitudinal edge of the seal to facilitate opening the package.

16. Claims 22-24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 21 above, and further in view of Denny (3,403,776) or Anderson (4,896,768). The package of Weinberger as modified further fails to show the first piece of material and the second piece of material comprises different rigidities.

Denny shows a package (1) enclosing a single disposable absorbent article (2) comprising a first piece of material (4), a second piece of material (6) and the first piece of material and the second piece of material having different rigidities. Anderson teaches a package (10) enclosing a single disposable absorbent article (14) comprising a first piece of material (12, formed from two layers), a second piece of material (16, single layer) and the first piece of material and the second piece of material having different rigidities (Figure 2). It would have been obvious to one having ordinary skill in the art in view of Denny or Anderson to modify the package of Weinberger as modified so the package comprises the first piece of material and the second piece of material having different rigidities to provide an additional strength and rigidity to the package.

17. Claim 25 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 21 above, and further in view of The Japanese Patent No. 10-95481

to Narawa (hereinafter Narawa). The package of Weinberger as modified further fails to show the package being vacuum packed.

Narawa shows a package (1) enclosing a single disposable absorbent article (2) comprising a vacuum packed. It would have been obvious to one having ordinary skill in the art in view of Narawa to modify the package of Weinberger as modified so the package is vacuum packed to reduce the size of the package.

(10) Response to Argument

Ground 1 - Rejection of claims 1, 3-5, 7-14 and 16-26

Appellant's argument with respect to this ground of rejection is noted, but it is unpersuasive because the phrase "disposable garment-type absorbent article" remains unclear as to what type of a disposable garment-type absorbent article is encompassed or excluded? It is clearly not an article of clothing because the instant specification does not provide support for such thing.

Ground 2 - Rejection of claims 1, 3, 4, 7 and 10

Appellant argues that Denny fails to disclose, teach, or suggest a package enclosing a single disposable garment-type absorbent article as required by claim 1 is noted. This is not persuasive because the phrase "garment-type" remains unclear as to what type of a disposable absorbent article is considered equivalent to a disposable garment-type absorbent article as claimed. Denny discloses a package containing a sponge or swab and the sponge or swab is inherently capable to be worn by a human between the human's skin and an article of clothing which is considered equivalent to a garment-type absorbent article as claimed.

Appellant argues that Denny fails to disclose the first piece of material and the second piece of material have different rigidities as required by claim 1 on page 9 of the brief is noted. This is not persuasive because Denny discloses the first piece of material formed from a paper and the second piece of material formed from a polypropylene film which is different rigidity than the first piece of material since the properties of paper and film are different. Appellant further argues “Denny does not disclose, teach, or suggest the rigidities, relative or otherwise, of its packaging material...” is also noted. This is not understood because claim 1 does not require the first piece and second piece of materials are formed from rigid materials with the first piece of material is more or less rigid than the second piece of material. However, the phrase “... different rigidities” in claim 1 is interpreted as the first piece of material is either more or less rigid than the second piece of material.

Appellant’s arguments with respect to claims 3 and 4 on page 9 of the brief are noted. They are not persuasive because for the combination of claims 1 and 3, Denny discloses the first piece of material (4) formed from paper and the second piece of material (6) formed from polypropylene film which appears to be less rigid than the first piece of material and the combination of claims 1 and 4, Denny discloses the first piece of material (6) and the second piece of material (4) which appears to be more rigid than the first piece of material.

Appellant’s argument with respect to claim 7 on page 9 of the brief is noted. This is not persuasive because Denny discloses in the embodiment of Figures 1 and 4, the portion of the first piece of material and the portion of the second piece of material (11, 12) extending beyond the seal and the portions are non-coterminous.

Appellant's argument with respect to claim 10 on page 9 of the brief is noted. This is not persuasive because the absorbent article (2) of Denny is inherently capable to be folded to provide a ratio in a folded configuration to an unfolded configuration (Figure 1) of no more than 0.09.

Ground 3 - Rejection of claim 21

Appellant argues that Whitefoot fails to disclose, teach, or suggest a package enclosing a single disposable garment-type absorbent article as required by claim 21 is noted. This is not persuasive because Whitefoot discloses the package containing bandages, sponges or gloves and each of bandages or sponges is inherently capable to be worn by a human between the human's skin and an article of clothing which is considered equivalent to a garment-type absorbent article as claimed.

Ground 4 - Rejection of claims 1, 3-5, 7, 10-14, 20-24 and 26

With respect to claims 1, 3-5, 7 and 10; Appellant's argument with respect to these claims are noted, but it is not persuasive for the reasons as set forth in Ground 2.

With respect to claims 21-24 and 26; Appellant indicates "Denny does not correct the deficiencies of Whitefoot ..." is noted. This is not understood because Whitefoot is used as a second reference to modify the package of Denny.

With respect to claims 11-14 and 20; Appellant's argument with respect to these claims are noted. This is not persuasive because the absorbent article (2) of Denny is capable to be folded to provide a ratio in a folded configuration to an unfolded configuration (Figure 1) of no more than 0.09 because one of ordinary skill in the art would understand that the absorbent article of Denny is capable to be folded.

Ground 5 - Rejection of claims 8, 16 and 25

Appellant's arguments with respect to these claims are noted and persuasive because the rejection of these claims under Ground 5 has been withdrawn by the Examiner (see (6) Grounds of Rejection to be Reviewed on Appeal).

Ground 6 - Rejection of claims 9, 17 and 18

Appellant's arguments with respect to this Ground are noted. They are not persuasive because claim 9 recites "The package of claim 1, wherein the opening element is coded to indicate the size or type of the absorbent artic.", but not "... different rigidities..." as argued by the Appellant. With respect to the opening element comprises color coded to indicate the size or type of an absorbent article, it would have been obvious to one having ordinary skill in the art in view of Frank-Farah'976 (see paragraph 8 above) to modify the package of Denny as modified so the package includes color coded to indicate the type of the article disposed within the package to provide more convenience for the user. With respect to the location of the color coded such as the opening element comprises the color coded as claimed, it would have been obvious to one having ordinary skill in the art in view of the package of Denny as modified so the color coded is disposed on the opening element to allow the user to review the type of the article prior of opening the package and because the selection of the specific location for the color coded such as the location as taught by Franks-Farah or as claimed would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well.

Ground 7 - Rejection of claim 19

Appellant's argument with respect to this Ground is noted. This is not persuasive for the reasons as set forth in paragraph 9 above and because it is old and conventional in the art to

provide tactile coded to indicate the size or type of the contents disposed with a package. For example only, U.S. Patent No. 5,730,292 to Jones (abstract and column 2, lines 21-34) and U.S. Patent No. 6,227,371 to Song (column 3, lines 27-30). Each of these patents discloses the tactile coded disposed at an opening element of a container.

Ground 8 - Rejection of claims 1, 3, 4, 7, 10-14 and 20

Appellant argues that Weinberger fails to disclose ... a package enclosing a single disposable garment-type absorbent article as required by claims 1 and 11 is noted. This is not persuasive because Weinberger discloses the disposable absorbent article comprises a cleansing towel, napkin or the like. The cleansing towel or napkin is inherently capable to be worn by a human between a human's skin and an article of clothing which is considered equivalent to a garment-type absorbent article as claimed.

Appellant argues that Weinberger fails to disclose the first piece of material and the second piece of material have different rigidities as required by claim 1 is noted. This is unpersuasive because it would have been obvious to one having ordinary skill in the art in view of Denny or Anderson (see paragraph 10) to modify the package of Weinberger so the package comprises the first piece of material and the second piece of material having different rigidities to provide an additional strength and rigidity to the package.

Appellant argues "the two packaging materials in Anderson are identical ..." is noted. This is not persuasive because Anderson discloses in the embodiment of Figure 2, a package (10) enclosing a single disposable absorbent article (14) comprising a first piece of material (12, formed from two layers), a second piece of material (16, single layer). It is clearly that the first piece of material and the second piece of material are not identical.

Appellant's argument with respect to the absorbent article has a ratio of the folded configuration to the unfolded configuration of less than 0.14 is noted. This is not persuasive because Weinberger discloses that it is old and conventional to fold the absorbent article into a plurality of folds by folding the same in half, then quarters, then eights, sixteenths and so on until the desired small, compact size is reached so that the same may be enclosed in a relatively small flat package (column 1, lines 22-30) which is considered equivalent to a ratio of the folded configuration to the unfolded configuration of less than 0.14 or no more than 0.09 as claimed.

Ground 9 - Rejection of claim 5

Appellant's arguments with respect to claims 1 and 5 are noted. They are not persuasive for the reasons as set forth in Ground 8.

Ground 10 - Rejection of claims 8 and 16

Appellant's arguments with respect to this Ground are noted. They are not persuasive for the reasons as set forth in paragraph 12 and because it is old and conventional in the art of providing a vacuum packed containing moist wipes. For example only, U.S. Patent No.5,050,737 to Joslyn et al. disclose a vacuum packed holding moist baby wipes to reduce the size of the packed (see claim 2).

Ground 11 - Rejection of claims 9, 17 and 18

Appellant's argument with respect to Franks-Farah is noted. This is not persuasive for the reasons as set forth in paragraph 13 and Franks-Farah is relied upon for nothing more than providing the color coded on the container is matched with the color coded on the instructions to indicate a type of the article when is required.

Ground 12 - Rejection of claim 19

Appellant's argument with respect to this Ground is noted. This is not persuasive for the reasons as set forth in paragraph 14 and because it is old and conventional in the art to provide tactile coded to indicate the size or type of the contents disposed with a package. For example only, U.S. Patent No. 5,730,292 to Jones (abstract and column 2, lines 21-34) and U.S. Patent No. 6,227,371 to Song (column 3, lines 27-30). Each of these patents discloses the tactile coded disposed at an opening element of a container.

Ground 13 - Rejection of claims 21 and 26

With respect to claim 21, Appellant's argument with respect to claim 21 is noted. This is not persuasive for the reasons as set forth in paragraph 15.

Appellant's argument with respect to the ratio of the folded configuration to unfolded configuration is noted. This is not persuasive for the reasons as set forth in Ground 8.

Ground 14 - Rejection of claims 22-24

Appellant's arguments with respect to Weinberger are noted. They are not persuasive for the reasons as set forth above.

Appellant's argument with respect to Denny is noted. This is not persuasive because Denny is relied for nothing more than providing the package comprises the first piece of material and the second piece of material have different rigidities.

Appellant's arguments with respect to Anderson are noted. They are not persuasive for the reasons as set forth in Ground 8.

Ground 15 - Rejection of claim 25

Appellant's arguments with respect to Narawa are noted. They are not persuasive for the reasons as set forth in Ground 10.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Luan K. Bui/

Primary Examiner, Art Unit 3728

Conferees:

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